CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA

Los Gatos Creek Trail Master Plan Reach 5, File No. PP06-112.
The City of San Jose intends to construct a multi-use trail along Los Gatos Creek (Reach 5 of the Los Gatos Creek Trail) to accommodate bicyclists and pedestrians. The trail will consist of a Class I, 8 to 12-foot wide paved path, except along portions that would utilize existing sidewalks and Class III bike routes. The project site generally extends along an approximately 0.75-mile stretch of Los Gatos Creek, between Auzerais Avenue and W. Santa Clara Street. The project is located in Council Districts 3 and 6.

California State Law requires the City of San José to conduct environmental review for all pending projects. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. Based on an initial study, the Director of Planning, Building & Code Enforcement has concluded that the project described above will not have a significant effect on the environment. The project location **does not** contain a listed toxic site.

The purpose of this notice is to inform the public of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on May 14, 2008, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **April 11, 2008** and ends on **May 12, 2008.** Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 200 East Santa Clara Street, San José CA 95113-1905. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and online at http://www.sanjoseca.gov/planning/eir/MND.asp

For additional information, please call Michael Rhoades at (408) 535-7821.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: April 11, 2008

/s/ Michael Rhoades
Deputy

DRAFT
MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Los Gatos Creek Trail Master Plan Reach 5

PROJECT FILE NUMBER: PP06-112

PROJECT DESCRIPTION: The City of San Jose intends to construct a multi-use trail along Los Gatos Creek (Reach 5 of the Los Gatos Creek Trail) to accommodate bicyclists and pedestrians. The trail will consist of a Class I, 8 to 12-foot wide paved path, except along portions that would utilize existing sidewalks and Class III bike routes. The project site generally extends along an approximately 0.75-mile stretch of Los Gatos Creek, between Auzerais Avenue and W. Santa Clara Street.

PROJECT LOCATION & ASSESSORS PARCEL NO.: (Multiple Parcels; see Initial Study)

COUNCIL DISTRICT: 3 & 6

APPLICANT CONTACT INFORMATION: Jan Palajac**,** City of San Jose, Department of Public Works, Community Facilities and Architectural Services Division. (408) 535- 8408

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

AESTHETICS – The project will not have a significant impact on this resource, therefore no mitigation is required.

AGRICULTURE RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

AIR QUALITY – The project will implement standard air quality protection measures and will not have a significant impact on air quality, therefore no mitigation is required.

BIOLOGICAL RESOURCES – The project could result in significant impacts to biological resources, including riparian woodland habitat, aquatic habitat and special status wildlife species. Impact summaries and mitigation measures to reduce impacts to less than significant levels are provided below.

Direct and Indirect Impacts to Riparian Woodland Habitat and Waters of the U.S.

Construction of the trail improvements would directly impact riparian habitat from tree removal, tree limbing, and grading. Construction work at the proposed undercrossing near W. San Carlos Street would require equipment in the bed of Los Gatos Creek. A detailed description of the impacts are provided in the Initial Study and summarized in Tables 1 and 2, below.

Table 1
Summary of Riparian Habitat Impacts/Mitigation

Habitat Type/Resource	Impact Type	Impact Acreage	Mitigation Acreage	Mitigation Ratio
Riparian Woodland	Direct impact to riparian woodland	0.18	0.55 acre of riparian revegetation	3:1
	Indirect impact to riparian woodland (where trail is located within 10 feet of woodland)	0.17	0.17 acre of riparian revegetation	1:1
	Direct impact to shaded riverine aquatic habitat (SRA) at under crossings	250 linear feet	250 linear feet of riparian revegetation along channel	1:1
Total		**0.35 acre 250 linear feet of SRA**	**0.72 acre of riparian woodland 250 linear feet of SRA cover**	

Table 2
Summary of Wetland and Open Water Habitat Impacts/Mitigation

Habitat Type/Resource	Impact Type	Impact Acreage	Mitigation Acreage	Mitigation Ratio
Waters of the U.S.				
Other Waters of the U.S. (open water, unvegetated creekbed and in-stream wetlands)	Direct impact to waterway from trail construction at roadway under crossing	1,300 square feet (0.03 acre)	See mitigation for Steelhead Trout and Chinook Salmon	1,300 square feet (0.03 acre)
	Indirect impact from construction in creek channel; side cast materials or sedimentation	None (with implementation of identified mitigation)	None	N/A
Total		**1,300 square feet (0.03 acre)**	**1:1**	**1,300 square feet (0.03 acre)**

Mitigation Measures

(MM Bio. 1) To compensate for direct impacts to 0.18 acre of riparian woodland from trail construction, the City shall implement a mitigation program that provides for a minimum of 0.55 acre of riparian woodland habitat.

(MM Bio. 2) To compensate for indirect impacts to 0.17 acre of riparian woodland, the City shall implement a mitigation program that provides for a minimum of 0.17 acre of riparian woodland habitat.

(MM Bio. 3) To compensate for direct impacts to SRA habitat from trail construction the City shall implement a mitigation program that provides for the following:

- SRA revegetation at a 1:1 replacement ratio, totaling a minimum of 250 linear feet.
- A total of 100 linear feet of the required 250 linear feet would be created by the undercut bank mitigation described in detail in the Initial Study; the additional 150 linear feet would be created elsewhere along Los Gatos Creek.

The City shall prepare and implement a revegetation plan following the guidelines presented for direct impacts to riparian woodland (as detailed in the Initial Study). The revegetation plan for riparian plantings shall specify the detailed location of all plantings, the use of locally native riparian plant species (collected from Los Gatos Creek area), and identify a 10-year maintenance and monitoring program. The plan shall include monitoring of the revegetation areas a minimum of once a year. During each year of the 5-year monitoring period, plantings shall achieve a minimum 80% survival rate with a health rating of "good" or better for the revegetation to be deemed successful. Between years 6-10, monitoring shall show a trend of increasing native plant cover.

(MM Bio. 4) To compensate for impacts to the Waters of the US, the City shall create 100 linear feet of high quality undercut bank habitat at a ratio of 1:1, in the form of constructed habitat elements that provide cover, along the west bank of Los Gatos Creek immediately upstream of the W. San Carlos Street railroad bridge. A complete description of this mitigation is contained in the Initial Study and summarized below under MM Bio 7.

(MM Bio. 5) The City shall implement the following BMPs during all phases of construction to avoid indirect impacts to the riparian habitat:

- Prepare and implement a Stormwater Pollution Prevention Plan (SWPPP).
- Conduct construction activities during the dry season.
- Divert concentrated runoff away from channel banks.
- Minimize vegetation removal.
- Identify with construction fencing all areas that require clearing, grading revegetation or otherwise disturbed.
- Stabilize disturbed soils to minimize erosion and sediment input to the creek.
- Implement erosion control measures to prevent sediment from entering the creek channel, including the use of silt fencing or fiber rolls to trap sediments.
- Provide hydroseeding of all disturbed areas as soon as practicable after disturbance following construction.
- Provide dewatering to manage discharge of pollutants when non-storm water and accumulated precipitation must be removed from a work location.
- Monitor the effectiveness of the erosion control measures during the first year's rainy season and implement remedial measures (e.g., reseeding, repair of silt fencing) if sedimentation or erosion is noted.
- Obtain all necessary permits from U.S. Army Corps of Engineers, California Department of Fish and Game, and Regional Water Quality Control Board for the trail construction within the creek

bed, including consultation with NOAA Fisheries on measures to avoid/minimize impacts to steelhead and Chinook salmon during trail construction. Trail construction shall follow all measures outlined by the regulatory agencies.

Impacts to Steelhead Trout and Chinook Salmon

The proposed project includes construction of an undercrossing beneath the railroad bridge near W. San Carlos Street. This would result in temporary, construction-related impacts to Los Gatos Creek, as well as long-term permanent impacts to fisheries due to encroachment in the channel affecting existing habitat.

Project construction would probably require stream dewatering and relocation of fish in the portions of the channel where the trail intersects ordinary high water. Even if the proposed trail alignment does not directly impact flowing water, dewatering would likely be required in order to provide access to the construction site by heavy equipment and materials.

Mitigation Measures

(MM Bio. 6) The City shall replace 100 linear feet of high quality undercut bank habitat at a ratio of 1:1, in the form of constructed habitat elements that provide cover, along the west bank of Los Gatos Creek immediately upstream of the W. San Carlos Street railroad bridge. The conceptual mitigation consists of large woody debris and rootwads integrated into the embankment design to replicate complex cover habitat. Native riparian vegetation would be integrated into the design to allow for long-term development of complex cover habitat via growth of live root wads at the toe of the embankment.

(MM Bio. 7) To avoid construction related impacts to steelhead trout and Chinook salmon associated with channel dewatering, the following measures shall be implemented to relocate fish prior to commencement of all construction activities:

- Place block nets at the upper and lower extent of the diversions to ensure that salmonids upstream and downstream do not enter the areas proposed for dewatering. Block nets shall extend across the entire wetted channel, and shall not be removed until installation of all cofferdams, bypass pipes or channels, diversion dams or other facilities designed to dewater or divert flow are completed.
- If electrofishing techniques are utilized during fish relocation activities, at least one member of the field crew shall be familiar with NOAA Fisheries' electrofishing guidelines and have a minimum of 100 hours of field experience with electrofishing techniques. Additional electrofishing measures are presented in the Initial Study and would be subject to approval by NOAA and CDFG.

(MM Bio. 8) Conduct a worker education program for construction employees and contractors at the project site addressing the potential for steelhead in the project area, how personnel should respond if they encounter steelhead, and the importance of protecting essential habitat features for steelhead. Employees shall be instructed regarding construction impact minimization methods.

Direct and Indirect Impacts to Nesting Birds in the Riparian Habitat

Removal of trees and trimming of other vegetation along the project corridor could result in direct and indirect impacts to nesting raptors and migratory birds, if they are present during construction.

Mitigation Measures

(MM Bio. 9) Schedule construction to occur outside the nesting season for bird species, including raptors and migratory species (February through July). If it is not possible to schedule tree removal and construction to occur outside the nesting season for sensitive riparian bird species, the City shall hire a qualified biologist to conduct preconstruction nesting bird surveys. These surveys shall be conducted no more than 30 days prior to any vegetation removal or construction. If nesting sensitive bird species are observed, the qualified biologist shall determine an appropriate buffer zone around the nest, and construction within the buffer zone shall be postponed until all young have fledged, as determined by monitoring by a qualified biologist.

Direct and Indirect Impacts to Western Pond Turtle

Work within the creek channel, including the removal of in-stream wetland vegetation and creek diversions, have the potential to temporarily impact western pond turtle by disturbing foraging and movement and injuring or killing individuals. Implementation of the mitigation below would reduce these impacts to a less than significant level.

Mitigation Measures

(MM Bio. 10) The City shall retain a qualified biologist immediately prior to vegetation removal or construction within the creek channel to conduct preconstruction surveys for pond turtles. If any pond turtles are observed and they do not leave the construction area on their own, the biologist shall capture and relocate the pond turtle to suitable habitat upstream of the project area. If turtles must be relocated, the biologist shall monitor the construction within the creek channel until all removal of vegetation and creek diversion is complete to ensure that the turtle does not return to the work area.

(MM Bio. 11) The City shall retain a qualified biologist to conduct employee training for all personnel involved in work within the creek channel prior to commencement of construction to educate workers on how to avoid direct impacts to the species.

CULTURAL RESOURCES – The project will implement standard measures that will avoid any significant impacts on buried cultural resources, therefore no mitigation is required.

GEOLOGY AND SOILS – The project site would be subject to strong ground shaking from a moderate to severe earthquake. The project site would also be subject to hazards associated with presence of liquefiable soils and other geotechnical hazards identified above. These conditions could result in potential damage to the proposed trail, which represents a significant impact. This impact would be reduced to a less-than-significant level with the following mitigation.

Mitigation Measures

The final trail shall be designed and constructed in accordance with the specific recommendations of a design-level geotechnical investigation. Prior to the issuance of a Public Works Clearance for the project, a design-level geotechnical analysis shall be prepared to the satisfaction of the Director of the Department of Public Works and include an evaluation of soil liquefaction and lateral spreading potential and identification of appropriate measures to remediate these conditions, and delineation of areas of slope instability and identification of appropriate mitigation, such as retaining walls, rock bolting, or other measures to remediate these conditions.

HAZARDS AND HAZARDOUS MATERIALS – Previous investigations have identified the presence of hazardous materials issues on and/or adjacent to the project site. Development of the project could uncover such substances during demolition, excavation, and off-hauling of soils, which represents a potential hazard to public health and the environment.

Mitigation Measures
Prior to trail construction, the applicant shall arrange for site-specific soil sampling to be conducted in order to assess the presence of potential soil contamination. If results indicate the presence of hazardous materials in excess of applicable screening levels, a soil management plan shall be prepared and implemented to reduce contamination to acceptable levels, maintain the safety of construction workers, and assure proper management of contaminated materials in accordance with state and local regulatory requirements. This plan shall be subject to review and approval by the City's Environmental Compliance Division and/or the appropriate regulatory agency.

HYDROLOGY AND WATER QUALITY – Construction of the proposed trail may result in an increase in erosion affecting the quality of storm water runoff entering Los Gatos Creek. Implementation of the following standard erosion control and water quality projection measures will reduce impacts to less than significant levels.

Standard Measures

- The City will obtain and comply with the NPDES General Construction Activity Strom Water Permit. Prior to construction, the City shall file a Notice of Intent and prepare a Strom Water Pollution Prevention Plan (SWPPP).
- Restrict grading to the dry season or meet City requirements for grading during the rainy season.
- Use BMPs to retain sediment on the project site.
- Place burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains.
- Provide temporary cover of disturbed surfaces to help control erosion during construction.
- Provide permanent cover to stabilize the disturbed surfaces.
- The City shall incorporate permanent, post-construction storm water treatment measures in compliance with provision C.3 of the City of San Jose's NPDES Permit. Proposed post-construction BMPs and design features include use of porous pavements, ornamental landscaping at the proposed undercrossing and south of W. San Fernando Street (to replace plantings damaged during construction), and rock rip-rap along the creek to control and treat runoff.

LAND USE AND PLANNING – The project will not have a significant impact on land use, therefore no mitigation is required.

MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

NOISE – The project will implement standard noise reduction measures that will prevent significant noise impacts during construction. Operation of the trail will not result in significant noise levels.

POPULATION AND HOUSING – The project will not have a significant impact on this resource, therefore no mitigation is required.

PUBLIC SERVICES – The project will not have a significant impact on public services, therefore no mitigation is required.

RECREATION – The project will have a beneficial impact on the availability of recreational opportunities, therefore no mitigation is required.

TRANSPORTATION / TRAFFIC – The project will provide a critical link in a larger trail system that extends from Lexington Reservoir to Guadalupe River and will provide additional opportunities for non-motorized transportation, therefore the project will have an incremental benefit on transportation.

UTILITIES AND SERVICE SYSTEMS – The project is not expected to require an expansion in wastewater, storm drainage, water, or solid waste facilities, or otherwise impact utilities or services, therefore no mitigation is required.

MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on May 12, 2008 any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: April 11, 2008

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Deputy

Adopted on: _____

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